

TASMANIA

**ROAD SAFETY (ALCOHOL AND DRUGS)
REGULATIONS 2018**

STATUTORY RULES 2018, No. 71

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ROAD SAFETY (ALCOHOL AND DRUGS) REGULATIONS 2018

I, the Governor in and over the State of Tasmania and its Dependencies in the Commonwealth of Australia, acting with the advice of the Executive Council, make the following regulations under the *Road Safety (Alcohol and Drugs) Act 1970*.

Dated 19 November 2018.

C. WARNER
Governor

By Her Excellency's Command,

MICHAEL DARREL JOSEPH FERGUSON
Minister for Police, Fire and Emergency Management

PART 1 – PRELIMINARY

1. Short title

These regulations may be cited as the *Road Safety (Alcohol and Drugs) Regulations 2018*.

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Part 1 – Preliminary

2. Commencement

These regulations take effect on the day on which the *Road Safety (Alcohol and Drugs) Amendment Act 2017* commences.

3. Interpretation

(1) In these regulations –

the Act means the *Road Safety (Alcohol and Drugs) Act 1970*;

the Marine Act means the *Marine Safety (Misuse of Alcohol) Act 2006*.

(2) In these regulations, a reference to a form by number is a reference to the form of that number in Schedule 1.

PART 2 – ADMINISTRATIVE

4. Qualified persons

For the purposes of paragraph (b) of the definition of *qualified person* in section 2(1) of the Act, the following qualifications are prescribed:

- (a) a Certificate III in Pathology Collection or an equivalent certificate;
- (b) a Certificate IV in Pathology or an equivalent certificate.

5. Qualifications for approved analysts

For the purposes of section 3(3) of the Act –

- (a) the prescribed qualification for an approved analyst is –
 - (i) a Bachelor of Science; or
 - (ii) a Bachelor of Pharmacy; or
 - (iii) a qualification, or experience, that, in the opinion of the Minister, is equivalent to subparagraph (i) or (ii); and
- (b) the prescribed experience for an approved analyst is the equivalent of at least 2 full years of postgraduate experience in the field of chemistry, pharmacy or toxicology.

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6. Testing and use of breath analysing instruments

- (1) An approved operator is not to use a breath analysing instrument, for the purpose of carrying out a breath analysis under the Act or the Marine Act, unless a certificate referred to in subregulation (2) has been issued in respect of the instrument within the 12-month period immediately before the date on which the instrument is so used.
- (2) An approved analyst must issue and sign a certificate, in accordance with Form 1, in respect of the testing of a breath analysing instrument if the approved analyst –
 - (a) tested the breath analysing instrument; and
 - (b) was satisfied that, at the time of the testing, the instrument was accurate.

7. Duties of approved operators in relation to breath analysing instruments

If a breath analysing instrument is to be used by an approved operator to carry out a breath analysis, the operator is to ensure –

- (a) that the person submitting to the breath analysis gives a sample of breath into a mouthpiece supplied by the operator; and
- (b) that an unused mouthpiece has been provided by the operator for use in the breath analysis; and

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- (c) that the operator does not carry out a breath analysis unless he or she is satisfied that the person has not consumed intoxicating liquor during the 15 minutes preceding the analysis; and
 - (d) that, after the completion of the breath analysis, the operator –
 - (i) records the resultant reading of the breath analysis; and
 - (ii) makes enquiries to ascertain whether the person is –
 - (A) if the breath analysis is carried out under the Act – a person mentioned in section 6(3) of the Act; or
 - (B) if the breath analysis is carried out under the Marine Act – an operator of a commercial vessel within the meaning of that Act; and
 - (iii) completes and signs the written statement required by –
 - (A) if the breath analysis is carried out under and for the Act – section 11(1) of the Act; or

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- (B) if the breath analysis is carried out under and for the Marine Act – section 29 of the Marine Act; and
- (e) that the person submitting to the breath analysis is provided with a copy of the printout supplied by that instrument in respect of that breath analysis.

PART 3 – BLOOD SAMPLES

8. Taking of blood samples

For the purposes of section 13(4) of the Act or section 32(2) of the Marine Act, a sample of blood is to be taken in the following manner:

- (a) the sample is to consist of approximately 15 millilitres of blood;
- (b) the instruments used for the purpose of taking the sample are to be –
 - (i) sterilised before use in a manner that does not leave any residue of a volatile organic substance on those instruments; or
 - (ii) used directly from packaging that has been designed to keep those instruments in a manner that would enable the use of those instruments in a medical procedure;
- (c) after placing a part of the sample in a suitable container, the container is to be agitated to ensure that –
 - (i) the substances contained in the container are dissolved in the blood; and
 - (ii) those substances and the blood are thoroughly mixed.

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Part 3 – Blood Samples

9. Labelling of blood samples

(1) In this regulation –

control sample means that part of a blood sample that may not be analysed or otherwise dealt with, except as a court may otherwise direct or on a request under –

- (a) if the blood sample is taken under and for the Act – section 13B(1) of the Act; and
- (b) if the blood sample is taken under and for the Marine Act – section 35(3) of the Marine Act.

(2) For the purposes of section 13(5A) of the Act or section 32(5) of the Marine Act, each container into which a part of the sample of blood is placed is to be labelled in the following manner:

- (a) the label on each container is to be marked with –
 - (i) the name of the person from whom the sample was taken; and
 - (ii) the date and time when the sample was taken; and
 - (iii) the name of the qualified person who took the sample;
- (b) the label on the container which holds the control sample is, in addition to the

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requirements of paragraph (a), to be marked with the word “Control”.

10. Provisions relating to blood samples delivered to police officers

(1) In this regulation –

delivered to a police officer means –

- (a) if the blood sample is taken under and for the Act – delivered under section 13(5B) of the Act; and
- (b) if the blood sample is taken under and for the Marine Act – delivered under section 32(6) of the Marine Act;

police station, in relation to the Marine Act, includes a police vessel or a shore facility used in connection with the operation of police vessels.

(2) For the purposes of section 13A(1) of the Act or section 34(2) of the Marine Act, a container containing part of a sample of blood that is delivered to a police officer is to be kept –

- (a) in the police officer’s possession, if the person from whom the sample is taken is not detained after being charged by the officer with an offence under the Act or the Marine Act; or
- (b) at the police station in a place of safety, if the person from whom the sample is

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taken is detained after being charged
with an offence under the Act or the
Marine Act.

- (3) If a blood sample has been kept at a police station under subregulation (2)(b), the officer in charge of that station is prescribed as the person to whom a request referred to in section 13A(3) of the Act, or section 34(4) of the Marine Act, respectively, is to be made in respect of that sample.

PART 4 – ORAL FLUIDS

11. Taking of oral fluids

For the purposes of section 13C(1)(a) of the Act, a sample of oral fluid is required to be taken from a person in the following manner:

- (a) an approved operator is to provide the person with a swab to collect the sample of oral fluid;
- (b) the swab is to be placed in the person's mouth and kept there until the approved operator is satisfied that a sufficient sample of oral fluid has been collected from the person;
- (c) the swab is to be placed into a suitable container provided by the approved operator;
- (d) the approved operator is to ensure that the swab has been mixed with, or dissolved in, any mixture in the suitable container;
- (e) the approved operator is to –
 - (i) divide the sample, mixed or dissolved, in accordance with paragraph (d), into 2 suitable containers; and
 - (ii) seal those containers with a tamper proof seal; and

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- (iii) label those containers in accordance with regulation 12.

12. Labelling of oral fluids

- (1) An approved operator, who sealed a container in accordance with regulation 11(e) into which part of a sample of oral fluid was placed under that regulation, is to label each container so sealed with –
 - (a) the initials of the person from whom the sample was taken; and
 - (b) the date and time when the sample was taken; and
 - (c) the initials of the approved operator.
- (2) In addition to subregulation (1), an approved operator is to label one container of a sample of oral fluid, sealed in accordance with regulation 11(e), with the word “Control”.

PART 5 – MISCELLANEOUS

13. Police officer to receive copy of reports of analysis

For the purposes of section 35(6)(b)(ii) of the Marine Act, the police officer who requested that a sample of blood be taken under that Act is the prescribed police officer.

14. Identification of drivers

For the purposes of section 10(8) of the Act, the prescribed means of identification of a driver is a tag, or label or other similar article, bearing the word “Driver”.

15. Prescribed illicit drugs

For the purposes of the Act, the following drugs are prescribed as illicit drugs:

- (a) 3,4-methylenedioxyamphetamine (MDA);
- (b) 3,4-methylenedioxyethylamphetamine (MDEA);
- (c) 3,4-methylenedioxymethylamphetamine (MDMA, ecstasy);
- (d) amphetamine;
- (e) cocaine;
- (f) *delta*-9-tetrahydrocannabinol (THC);

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- (g) diacetylmorphine (heroin);
- (h) *gamma*-hydroxybutyric acid (GBH);
- (i) ketamine;
- (j) lysergic acid diethylamide (LSD);
- (k) methaqualone (Quaalude);
- (l) methylamphetamine (speed);
- (m) morphine;
- (n) *N,N*-diethyltryptamines (DET);
- (o) *N,N*-dimethyltryptamines (DMT);
- (p) paramethoxyamphetamines (PMA);
- (q) phencyclidine (PCP);
- (r) psilocybin (magic mushrooms).

16. Liability for costs of medical reports and examinations

For the purposes of section 19(5) of the Act, the sum of \$20 is prescribed as the sum exceeding which a person becomes liable to pay for the whole or a portion of the costs of a medical report and examination under that section.

17. Forms of statements

For the purposes of section 11 of the Act, the prescribed form of written statement is –

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- (a) Form 2, if the concentration of alcohol in the breath of a person submitting to a breath analysis, as determined by that analysis, is greater than the prescribed concentration; or
 - (b) Form 3, if –
 - (i) it appears to an approved operator carrying out a breath analysis that the person submitting to the analysis is, or may be, a person mentioned in section 6(3) or (4) of the Act; and
 - (ii) the breath analysis indicates that alcohol is present in that person's body; or
 - (c) Form 4, if –
 - (i) the concentration of alcohol in the breath of a person submitting to a breath analysis, as determined by that analysis, is not greater than the prescribed concentration; and
 - (ii) it appears to an approved operator carrying out a breath analysis that the person submitting to the analysis is not, or may not be, a person mentioned in section 6(3) or (4) of the Act; or

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- (d) Form 5, if the person has provided a sample of oral fluid for oral fluid analysis.

18. Infringement notice offences

- (1) For the purposes of section 18A of the Act –
 - (a) an offence in a provision specified in column 1 of the table in Schedule 2 is prescribed as an infringement offence; and
 - (b) the penalty specified in column 2 of the table in Schedule 2 is prescribed as the penalty for the relevant offence specified in column 1 of that table; and
 - (c) the period of disqualification specified in column 3 of the table in Schedule 2 is prescribed for the relevant offence specified in column 1 of that table.
- (2) An infringement notice may not be issued in respect of an offence against section 6(1) or 6A(1) of the Act, if the person who is reasonably believed to have committed the offence –
 - (a) has been convicted of –
 - (i) the crime of manslaughter, if that conviction relates to the driving of a motor vehicle; or
 - (ii) the crime of causing death by dangerous driving; or

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- (iii) the crime of causing grievous bodily harm by dangerous driving; or
 - (iv) the crime of dangerous driving; or
 - (v) an offence against the Act; or
 - (vi) an offence against section 32 of the *Traffic Act 1925*; or
- (b) was driving a prescribed vehicle at the time when the offence is believed to be committed.

19. Legislation rescinded

The legislation specified in Schedule 3 is rescinded.

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SCHEDULE 1 – FORMS

Regulation 3(2)

Form 1

Regulation 6(2)

**CERTIFICATE OF TEST OF BREATH ANALYSING
INSTRUMENT No.**

I,,
an approved analyst appointed under the *Road Safety (Alcohol and
Drugs) Act 1970*, certify that, in accordance with regulation 6 of the
Road Safety (Alcohol and Drugs) Regulations 2018, I caused the
accuracy of the breath analysing instrument No.
of the type known as (*type*) to be tested on
..... (*date*), and, as a result of the test,
I am satisfied that the instrument was then in proper working order.

.....
(*Signature of approved analyst*)

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Form 2

Regulation 17(a)

Statement in a case where the concentration of alcohol in the breath of the person submitting to the breath analysis, as determined by that analysis, is greater than the prescribed concentration.

NOTICE OF RESULT OF BREATH ANALYSIS

The breath analysis to which you
(name) submitted on (date) and which was
completed at (time) on that day has shown that your
breath alcohol level EXCEEDS THE LIMIT permitted by law for
drivers of motor vehicles. Your breath alcohol level was
..... grams of alcohol in 210 litres of breath.

YOU MAY –

(1) Accept this reading

OR

(2) Submit to a blood test.

If you do submit to a blood test, evidence of the result of that test may be given for or against you in any legal proceedings that follow.

If you desire arrangements to be made for a blood test you should make your request now.

This statement was read over to you at (time) on (date).

.....
(Signature of approved operator)

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Form 3

Regulation 17(b)

Statement in a case where it appears to the approved operator carrying out the breath analysis that the person submitting to the analysis is, or may be, a person mentioned in section 6(3) or (4) of the Act and the result of the analysis indicates that alcohol is present in that person's body.

NOTICE OF RESULT OF BREATH ANALYSIS

The breath analysis to which you
(name) submitted on (date) and which was
completed at (time) on that day has shown that your
breath alcohol level was grams of alcohol in 210
litres of breath.

If you are a person mentioned in section 6(3) or (4) of the *Road Safety (Alcohol and Drugs) Act 1970*, this indicates that you have committed an offence in driving a vehicle while alcohol is present in your body.

YOU MAY –

(1) Accept this breath alcohol level

OR

(2) Submit to a blood test.

If you do submit to a blood test, evidence of the result of that test may be given for or against you in any legal proceedings that follow.

If you desire arrangements to be made for a blood test you should make your request now.

This statement was read over to you at (time) on (date).

.....
(Signature of approved operator)

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BACK OF FORM

You are a person mentioned in section 6(3) or (4) of the Act if –

- (a) you do not hold an authority to drive a motor vehicle; or
- (b) you do not hold an authority to drive a motor vehicle of the class you were driving immediately before the breath analysis was taken; or
- (c) you hold a driver licence that requires you to have no alcohol present in your body while driving a motor vehicle; or
- (d) you were driving a prescribed vehicle immediately before the breath analysis was taken; or
- (e) on or after 3 December 2018 you have been convicted of the offence of reckless driving or negligent driving, or an offence under section 32 of the *Traffic Act 1925*, and, as a result of the course of conduct giving rise to that crime or offence, you were also convicted of an offence under section 4 of the *Road Safety (Alcohol and Drugs) Act 1970*; or
- (f) you hold a provisional licence or a learner licence; or
- (g) on or after 12 December 1991 you have been convicted of –
 - (i) the crime of manslaughter arising out of the driving of a motor vehicle; or
 - (ii) the crime of causing death by dangerous driving –
and, as a result of the course of conduct giving rise to that crime, you were also convicted of an offence under section 4 or section 6 of the *Road Safety (Alcohol and Drugs) Act 1970*; or
- (h) you were driving under the authority of a restricted driver licence granted in respect of a disqualification from driving under the *Road Safety (Alcohol and Drugs) Act 1970*; or
- (i) you have been convicted of 3 or more offences under the *Road Safety (Alcohol and Drugs) Act 1970* arising from at least 3 separate incidents where at least one of those offences was committed on or after 12 December 1991.

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Form 4

Regulation 17(c)

Statement in a case where the concentration of alcohol in the breath of the person submitting to the breath analysis, as determined by that analysis, is not greater than the prescribed concentration, and that person has not, on inquiry made of him or her by an approved operator, indicated that he or she is a person mentioned in section 6(3) or (4) of the Act.

NOTICE OF RESULT OF BREATH ANALYSIS

The breath analysis to which you
(name) submitted on (date) and which was
completed at (time) on that day has shown that your
breath alcohol level was grams of alcohol in 210
litres of breath, which does NOT exceed the prescribed limit.

.....
(Signature of approved operator)

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Form 5

Regulation 17(d)

Statement in a case where an oral fluid sample has been collected from a person by an approved operator, after that person has become liable under the Act to submit to an oral fluid analysis.

NOTICE OF ORAL FLUID COLLECTION

I,, (*approved operator*) do hereby certify that at (*time*) on (*date*) at (*sample collection location*) a sample of oral fluid was taken from (*name of subject*) of (*subject's address*).

YOU MAY

(1) Accept the result returned for this analysis

OR

(2) Submit to a blood test.

If you do submit to a blood test, evidence of the result of that test may be given for or against you in any legal proceedings that follow.

If you desire arrangements to be made for a blood test, you should make that request now.

Do you require a blood test? Approved Operator circle *YES* or *NO*

This statement was read over to you at (*time*) on the (*date*).

.....
(*Signature of approved operator*)

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Regulation 18

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SCHEDULE 3 – LEGISLATION RESCINDED

Regulation 19

Road Safety (Alcohol and Drugs) Amendment (Public Vehicles Reform) Regulations 2000 (No. 73 of 2000)

Road Safety (Alcohol and Drugs) Amendment Regulations 2000 (No. 141 of 2000)

Road Safety (Alcohol and Drugs) Amendment Regulations 2005 (No. 70 of 2005)

Road Safety (Alcohol and Drugs) Amendment Regulations (No. 2) 2005 (No. 84 of 2005)

Road Safety (Alcohol and Drugs) Amendment Regulations 2006 (No. 144 of 2006)

Road Safety (Alcohol and Drugs) Regulations 2009 (No. 131 of 2009)

Road Safety (Alcohol and Drugs) Amendment Regulations 2015 (No. 46 of 2015)

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Printed and numbered in accordance with the *Rules Publication Act 1953*.

Notified in the *Gazette* on 28 November 2018.

These regulations are administered in the Department of Police, Fire and Emergency Management.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations, for the purposes of the *Road Safety (Alcohol and Drugs) Act 1970* (and, by extension, the *Marine Safety (Misuse of Alcohol) Act 2006* and the *Rail Safety National Law (Tasmania) Act 2012*) –

(a) prescribe –

- (i) the method of taking, labelling and keeping of blood samples and oral fluid samples; and
- (ii) the procedure for the maintenance, testing and use of breath analysing instruments; and
- (iii) the offences for which an infringement notice may be issued; and
- (iv) certain drugs as illicit drugs for the purposes of the Act; and

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- (v) the qualifications and experience required for approved analysts and qualified persons; and
 - (vi) other related matters; and
- (b) rescind the *Road Safety (Alcohol and Drugs) Regulations 2009* and its amending regulations.